

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 2, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Bill Eggers (D)
Rep. Gail Gutsche (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Aubyn A. Curtiss (R)
Rep. Steven Gallus (D)
Rep. Christopher Harris (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 201 - 1-25-01**
HB 359 - 1-30-01
HB 202 - 1-30-01

HB 182 - 1-30-01

HB 396 - 1-30-01

Executive Action: HB 295 - DP

HB 396 - DPAA

HB 182 - DPAA

HB 119 - DPAA

HB 202 - Table

HEARING ON HB 201

Sponsor: Rep. Bob Davies, HD 27, Bozeman said this Bill deals with the crime of embezzlement. It is a crime that has long existed and the problem is an embezzler simply walks instead of serving any penalty. The reason for that is they are generally considered non-dangerous offenders and with the crowded conditions in the jails, they are not required to serve any jail time. This Bill is calling for a definition of embezzlement in the statute and a requirement of a one-year minimum sentence. The one-year mandatory sentence is usually three months in reality and even that is not hard and fast in statute. The judge still has some discretion. If this language is in the statute it will serve as a deterrent.

Proponents: Lee Wizer, Gallatin County, Business owner in Billings.

Marty Lambert, County Attorney, Gallatin County

EXHIBIT (juh27a01) **EXHIBIT** (juh27a02)

Opponents: None

Questions from Committee Members and Responses: Reps. Laszloffy, Thomas, Hurdle, Noennig, Rice, Shockley to Mr. Lambert.

Closing by Sponsor: Rep. Davies closed the Hearing on HB 201 by saying this crime is a betrayal of trust. This provision in the law would help prevent these kinds of crimes.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 29.1}

HEARING ON HB 202

Sponsor: Rep. Bob Davies, HD 27, Bozeman said this is a Bill that he presented last session, got it through the House but not the Senate. The background is about three years ago **Governor Racicot** issued an order prohibiting state employees from possessing a firearm with limited exceptions. The foresters and some others

thought this was a violation of their right and also that there was a very real need.

This Bill would require that any state employee who wants to carry a firearm must have a concealed carrying permit. The employee would not be able to carry the firearm into state buildings or schools. All the restrictions would apply and those applying for the concealed carrying permit would have to be checked out.

{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 5.5}

Proponents: Dan Hawkins, Helena, State Employee **EXHIBIT(juh27a03)**
EXHIBIT(juh27a04) **EXHIBIT(juh27a05)**

Mark Ahner, Helena, Self, State Employee

Darrel J. Bakken, Helena, Self

Frank Crandell, Bozeman, State Employee

Opponents: Al Smith, Montana Trial Lawyers Association

Barry Stang, Montana Motor Carriers Association,
Helena. **EXHIBIT(juh27a06)**

Betty Whiting, Montana Association of Churches,
Billings.

{Tape : 1; Side : B; Approx. Time Counter : 5.5 - 31.2}

{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 3.6}

Questions from Committee Members and Responses: Rep. Mangan, asked Mr. Ahner what happened before three years ago? Mr. Ahner said prior to Governor Racicot's issuance of that management memo which dealt with possession of firearms, there were no restraints on individual employees within the Department of Natural Resources. That is all he can speak to. It was at the discretion of each agency director as to how to control or limit the use of firearms.

Reps. Mangan, Eggers, Adams, Hurdle, Gutsche, Peterson, to Rep. Davies and Mr. Ahner.

Closing by Sponsor: Rep. Davies closed the Hearing on HB 202 by saying all employee do not want to carry firearms and certainly don't have to. What the Bill is trying to do is use the concealed carry process as a mechanism that is already in place.

{Tape : 2; Side : A; Approx. Time Counter : 3.6 - 29.9}

{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 0.9}

HEARING ON HB 359

Sponsor: Rep. Paul Clark, HD 72, Trout Creek said currently the State of Montana does have a DNA data base at the crime lab in Missoula which is under the jurisdiction of the Montana Department of Justice. **EXHIBIT(juh27a07)** **EXHIBIT(juh27a08)**

Proponents: Julie Long, Supervisor, State Crime Lab
EXHIBIT(juh27a09)

Diane Leibinger-Koch, Attorney, Department of Corrections, Helena.

Opponents: None

Questions from Committee Members and Responses: Rep. Adams to Ms. Leibinger-Koch.

Closing by Sponsor: Rep. Clark closed the Hearing on HB 359 by saying the primary purpose of government agencies should be to protect the safety of our citizens. This is a Bill that does just that in a simple straight forward way. The money saved in the Bill, which cannot be calculated and put in the fiscal note, exceeds by far, the money spent.

{Tape : 2; Side : B; Approx. Time Counter : 0.8 - 21.7}

HEARING ON HB 182

Sponsor: Rep. Brad Newman, HD 39, Butte **EXHIBIT(juh27a10)**. HB 182 would amend a particular provision in the Montana Code Annotated Section 19-5-103 which is entitled "call of retired judge for duty". Under current Montana law, when a district judge takes ill, a district judge dies, a district judge is unavailable for service and that particular judicial district needs help, the Chief Justice has the authority to call a retired judge into service to fill the void and to get people their legal redress. The statute as it exists right now, has the word "voluntarily" in front of retired and that has been interpreted to mean that a judge who has stood for re-election and been defeated can't be called into service. The provision on line 13 that "only judges who have served at least 8 years are eligible for the call from the Chief Justice" which means that in the case

of an appointed judge, the judge has stood for election and been victorious and has been put in office by the voters or a judge who was not initially appointed, but has stood for election at least twice and been victorious before subsequently losing an election.

{Tape : 2; Side : B; Approx. Time Counter : 21.7 - 29.8}

{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 1.4}

Proponents: Jack Taylor, Montana Judges' Association, could not be present but asked to be a proponent.

Al Smith, Montana Trial Lawyers' Association

Opponents: None

Questions from Committee Members and Responses: Saved for executive session.

Closing by Sponsor: Rep. Newman waived closing.

HEARING ON HB 396

Sponsor: Rep. Ken Peterson, HD 20, Billings said there are serious problems with people driving in the State of Montana under the influence of alcohol or drugs or both. Some of these people are driving without insurance and without drivers' licenses and the numbers are increasing. This Bill would cause a vehicle that is being **driven by the person convicted** of driving while intoxicated, under the influence of alcohol or drugs as the law is presently structured, to forfeit the vehicle they are driving on the very first conviction, if in fact, there is property damage that occurs or personal injury to anyone. If there is neither, the vehicle would not be forfeited on first conviction. The vehicle would be forfeited on second conviction whether there is property damage or personal injury or not.

Proponents: None

Opponents: None

Questions from Committee Members and Responses: Saved for executive session.

Closing by Sponsor: Rep. Peterson closed the Hearing on HB 396.

{Tape : 3; Side : A; Approx. Time Counter : 1.5 - 10.3}

EXECUTIVE ACTION ON HB 119

Motion: REP. NOENNIG moved that HB 119 DO PASS. #1

Discussion: Rep. Noennig explained the Bill and amendments.

Motion: REP. NOENNIG moved that HB 119 BE AMENDED. #2
EXHIBIT (juh27a11)

Discussion: Reps. Laszloffy, Noennig, Mangan, Hurdle, Newman, Gutsche, Younkin, Peterson to, without objection, Craig Thomas, Executive Director, Pardon and Parole Board and Mr. MacMaster for further explanation and clarification.

{Tape : 3; Side : A; Approx. Time Counter : 10.3 - 29.7}

{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 25.2}

Vote: The Noennig amendment #2 carried 14-3 with Reps. Gutsche, Mangan and Newman voting no.

Motion: REP. NOENNIG moved that HB 119 DO PASS AS AMENDED. #3

Discussion: Reps. Hurdle, Noennig, Mangan, Peterson, Shockley.

{Tape : 3; Side : B; Approx. Time Counter : 25.2 - 29.6}

{Tape : 4; Side : A; Approx. Time Counter : 0.1 - 3.4}

Vote: Motion #3 carried 13-7 with Reps. Clark, Eggers, Gallus, Gutsche, Harris, Hurdle and Mangan voting no.

Mr. MacMaster said he waited to see if HB 119 passed as amended before he spoke. He thinks they are misinterpreting the whole area. The section that the Bill amends is 46-23-202. The 1989 decision had nothing to do with that section. It construed the section prior to it. The decision that said that under this section that the Bill amends, you have a due process right to a hearing before the Board, was a 1996 decision. Therefore, as a matter of due process, the way this section is worded, you have a right to a hearing before the Board. Your due process rises from the fact that this section is worded that you get a hearing before the Board. If the section is changed, the way the Bill does to make it clear the hearing can be before a designee, that due process right goes away. The section is then clearly worded so that you do not have a right to a hearing before the full Board. If the committee is going to amend this section, as just

amended, you cannot raise the bill applicable back to the date of the 1989 decision. That decision had nothing to do with this section. The date that is in the three amendments has to be the effective date of the switch in the language, from hearing before the Board to hearing before the designee.

Discussion: Rep. Noennig.

EXECUTIVE ACTION ON HB 182

Motion: REP. PETERSON moved that HB 182 DO PASS. #4

Discussion: Reps. Laszloffy, Newman, Peterson.

Motion/Vote: REP. NEWMAN moved that HB 182 BE AMENDED to strike the word "and" on page 1, line 7 in the title, where it says Chief Justice; and amending and strike at the end of that line; "and providing an immediate effective date". #5 Motion carried unanimously 20-0.

Discussion: Reps. Noennig, Newman, Laszloffy, Peterson, Shockley.

Motion/Vote: REP. LASZLOFFY moved that HB 182 DO PASS AS AMENDED. #6. Motion carried unanimously 20-0.

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Rep. Hurdle made a formal request that HB 233 and HB 323 be moved up for Executive Action as quickly as possible. Chairman Shockley said it has been considered. Rep. Hurdle also made a point of personal privilege concerning Rep. Laszloffy's singling her out by censoring her speech or choice of words which contributes to a hostile work environment and she has the right to word her questions any way she chooses. Chairman Shockley said it has been noted.

Rep. Laszloffy made a point of personal privilege to reply to Rep. Hurdle saying he had no problem except yesterday on the floor when she said "the Republicans voted against reducing government". That had nothing to do with what they were talking about and that was editorializing.

Chairman Shockley said both points of personal privilege have been heard and noted.

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EXECUTIVE ACTION ON HB 396

Motion: REP. PETERSON moved that HB 396 DO PASS. #7

Discussion: Reps. Adams, Peterson, Gutsche, Hurdle, Laszloffy.

{Tape : 4; Side : A; Approx. Time Counter : 5.4 - 29.3}

{Tape : 4; Side : B; Approx. Time Counter : 0.1 - 3.2}

Motion: REP. LASZLOFFY moved a substitute motion that HB 396 BE AMENDED. #8

Discussion: Reps. Peterson, Noennig, Shockley, Mangan.

Vote: The Laszloffy amendment #8 carried 14-6 with Reps. Clancy, Gutsche, Hurdle, Newman, Peterson, Thomas voting no.

Discussion: Reps. Newman, Shockley, Peterson, Thomas, Adams, Hurdle, Rice, Wolery.

{Tape : 4; Side : B; Approx. Time Counter : 3.2 - 21}

Motion/Vote: REP. SHOCKLEY moved that HB 396 DO PASS AS AMENDED. #9 Motion carried 13-7 with Reps. Shockley, Adams, Clancy, Gutsche, Holden, Rice and Wolery voting no.

EXECUTIVE ACTION ON HB 359

Motion: REP. NEWMAN moved that HB 359 DO PASS. #10

Motion: REP. LASZLOFFY moved that HB 359 BE POSTPONED until Monday. #11.

EXECUTIVE ACTION ON HB 202

Motion: REP. WOLERY moved that HB 202 DO PASS. #12

Motion: REP. PETERSON moved that HB 202 BE AMENDED. #13

Discussion: Reps. Clancy, Peterson.

{Tape : 4; Side : B; Approx. Time Counter : 21 - 29.3}

Vote: Motion #13 carried 13-7 with Reps. Clancy, Gutsche, Holden, Hurdle, Rice, Thomas and Wolery voting no.

Motion: REP. NOENNIG moved that HB 202 DO PASS AS AMENDED. #14

Discussion: Reps. Noennig, Gutsche, Clancy, Laszloffy, Newman, Mangan, Shockley.

Vote: Motion #14 failed on a tie vote 10-10.

{Tape : 5; Side : A; Approx. Time Counter : 0.1 - 12.0}

Motion/Vote: REP. MANGAN moved that HB 202 BE TABLED. #15.
Motion carried unanimously 20-0.

EXECUTIVE ACTION ON HB 295

Motion: REP. PETERSON moved that HB 295 DO PASS. #16

Discussion: Rep. Shockley.

Vote: Motion carried unanimously 20-0.

{Tape : 5; Side : A; Approx. Time Counter : 9.6 - 16.9}

ADJOURNMENT

Adjournment: 12:15 P.M.

REP. JIM SHOCKLEY, Chairman

MARY LOU SCHMITZ, Secretary

JS/MS

EXHIBIT (juh27aad)